APPEAL NO. 022778
FILED DECEMBER 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 30, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable (low back) injury on _____ (all dates are 2002 unless otherwise noted); that because the claimant did not have a compensable injury, the claimant did not have disability; and that the claimant failed to timely report his injury to the employer pursuant to Section 409.001.

The claimant appealed the decision on the disputed issues on a sufficiency of the evidence basis. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

As both parties acknowledged at the CCH, this case involves who had the greater credibility. The claimant testified that he sustained a low back injury on April 1, lifting a very heavy steel plate and that he did not immediately report the injury because he thought it was a kidney infection. On May 1 the claimant did see a doctor who told him that he did not have a kidney infection but had a lumbar back strain/sprain. The claimant contends that he reported a work-related injury on May 1, 8, 9, and 17. The employer's office manager acknowledged that she received off-work slips on May 9 (the May 8 slip) and May 17. The office manager denies that the claimant reported a work-related injury on May 1. The claimant alleges that he had good cause for failing to timely report the injury because he thought he had a kidney infection. We note that any good cause ended on May 1 when the treating doctor told the claimant he had a back strain. The off work slips in evidence take the claimant off work for an acute lumbosacral strain and schedule an MRI "for disc degeneration." The hearing officer commented that "Claimant's testimony was not credible; [the office manager's] testimony was credible."

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming evidence as to be clearly wrong and unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Because we are affirming the hearing officer's decision of no compensable injury, the claimant by definition in Section 401.011(16) does not have disability.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE WEST** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge